



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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### IND102466.E

India: Procedure to register a transport company; whether permits are required to transport goods between different states, particularly Jammu and Kashmir; procedure for clearance at checkpoints of state borders; whether the driver must travel with an assistant and whether both require licences; whether income tax registration is mandatory (2005 - 2007)

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Information regarding the above-noted subjects was scarce among the sources consulted by the Research Directorate.

The central government's Department of Road Transport and Highways has limited jurisdiction over transportation (India n.d.j); state and regional departments of transportation are responsible for a wider range of matters such as granting permits and registration (ibid. n.d.a). Some information on the regulations in the states of Delhi, Meghalaya, Andhra Pradesh, Karnataka, Punjab, Pondicherry, Goa, Jammu and Kashmir is provided below.

According to several state government transport authorities, owners of transportation vehicles must obtain a permit by the regional or state transport authority (India n.d.a; ibid. n.d.c; ibid. n.d.e). The Transport Department of the government of Delhi defines a permit as "an instrument issued by the State or Regional Transport Authority authorizing the use of a motor vehicle as a transport vehicle in specified manner as per the relevant provisions of the Motor Vehicle Act and rules..." (ibid. n.d.d see also India n.d.g). However, vehicles transporting goods whose weight does not exceed 3,000 kilograms and transport vehicles owned by the government are exempted from the requirement to obtain a permit (ibid.; ibid. n.d.d).

There are four different categories of permit for transport vehicles: contract carriages (for taxis), stage carriages (for buses), goods carriages (for transportation of goods) and casual contract carriage (for transportation of a combination of goods and passengers) (India n.d.a). Permits can be temporary or periodic (which are valid for five years) (ibid.; ibid. n.d.c; ibid. n.d.e). The Transport Department of Andhra Pradesh states that a national permit can be issued for a vehicle carrier to operate throughout India or for a minimum of four contiguous states (ibid. n.d.f).

The Joint Commissioner for Transport, Vigilance and Pollution of the Transport Department of Karnataka stated, in correspondence to the Research Directorate, that all truck drivers must have a licence to drive a vehicle as per the provisions of the Motor Vehicle Act 1988 (ibid. 18 Apr. 2007). The Motor Vehicle Act 1988 states that "no person shall drive a transport vehicle ... unless his driving licence specifically entitles him to do so" (India 1988, Sec. 3).

Owners of transportation vehicles must also obtain a fitness certificate for their vehicle, which needs to be renewed each year, otherwise the vehicle is not considered to have been validly registered (India n.d.b.; India 1988, Sec. 56; ibid. n.d.e). Information on whether drivers must travel with an assistant could not be found among the sources consulted by the Research Directorate.

### Registration of transport company

Regarding registration of a company in India, the Companies Act, 1956 provides the following:

Any seven or more persons, or where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability. (India 18 Jan. 1956, Sec. 12(1))

However, the Companies Act, 1956 does not apply to the State of Jammu and Kashmir (ibid., Sec. 1(3)). The Registrar of Companies (ROC) of Jammu and Kashmir is the office responsible for registering companies in the State of Jammu and Kashmir (India n.d.h). The Web site of the ROC of Jammu and Kashmir provides the following information regarding the procedure to incorporate a private limited company:

1. Select, in order of preference, a few suitable names, not less than four, indicative of the main objects of the company.

2. Ensure that the name does not resemble the name of any other company already registered and also does not violate the provisions of Emblems and names (prevention of improper use) Act, 1950.
3. Apply to the concerned ROC to ascertain the availability of name in Form-1 A of General Rules and Forms along with a fee of Rs.500/- [or approximately 13.60 Canadian dollars (CAD) (Canada 7 May 2007a)]. If proposed name is not available apply for a fresh name on the same application.
4. Arrange for the drafting of the Memorandum and Articles of Association by the solicitors, vetting of the same by ROC and printing of the same.
5. Arrange for stamping of the Memorandum and Articles with the appropriate stamp duty.
6. Get the Memorandum and Articles signed by at least two subscribers in his own hand, his father's name, occupation, address and the number of shares subscribed for and witnessed by at least one person.
7. Ensure that the Memorandum and Article is dated on a date after the date of stamping.
8. Get the following forms duly filled up and signed:
  - a. Declaration of compliance - Form-1;
  - b. Notice of situation of registered office of the company - Form-18;
  - c. Particulars of Director, Manager or Secretary - Form-32.

Present the following documents with ROC with filing fee and registration fee:

- i. The stamped and signed copies of Memorandum and Articles of Association (3 copies).
  - ii. Form-1, 18 & 32 in duplicate.
  - iii. Any agreement referred to in the M&A.
  - iv. Any agreement proposed to be entered into with any individual for appointment as Managing or whole time Director.
  - v. Name availability letter issued by ROC.
  - vi. Power of Attorney from the subscribers in favour of any person for making corrections on their behalf in the documents and papers filed for registration.
  - vii. Pay the Registration and Filing Fee by Demand Draft/Banker's Cheque if it exceeds Rs.1000/- [or approximately CAD27.20 (Canada 7 May 2007b)]
11. Obtain Certificate of Incorporation from ROC.

Additional Steps to be taken for formation of a Public Limited Company

12. Consent of Directors to act as such in Form No.29.
1. Arrange for payment of application and allotment money by Directors on shares taken or agreed to be taken.
  2. File the statement in lieu of prospectus with ROC in schedule-iv of the Companies Act.
  3. File a declaration in Form-20 duly signed by one of the Director.
  4. Obtain the Certificate of Commencement of Business.
    - As per Citizens Charter name, availability will be disposed of in 3 working days.
    - Application for registration of a company - 10 working days. (India n.d.i)

Information on the procedure for clearance at checkpoints of state borders and on whether income tax registration is mandatory could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

#### References

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#### Additional Sources Consulted

**Oral sources:** Attempts to contact the Transport Department of Punjab, the Transport Department of Mizoram, the Transport Department of Tamil Nadu, the Institute of Road and Transport Technology, the Metropolitan Transport Corporation Chennai Ltd. and the Motor Vehicles Department of Kerala were unsuccessful.

The Department of Road Transport and Highways, the National Highways Authority of India, the Transport Department of Andhra Pradesh, the Transport Department of Delhi, the Transport Department of Jammu and Kashmir, the Transport Department of Madhya Pradesh, the Transport Department of Tripura, the Transport Department of Meghalaya, the Transport Department of Bihar, the Department of Motor Vehicles of Orissa, the State Express Transport Corporation Ltd., the Pallavan Transport Consultancy Services Ltd., the Institute of Road Transport, the Association of State Road Transport Undertakings, the Uttar Pradesh Transport Department, the Central Road Research Institute did not provide information within the time constraints of this Response.

The Uttar Pradesh State Road Transport Corporation did not have information on the subject.

**Internet sites, including:** Association of State Road Undertakings, Central Road Research Institute, Department of Road Transport and Highways, Department of Transport of Government of Jammu and Kashmir, Directorate of Transport of Government of Manipur, Factiva, Government of Bihar Transport Department, Government of Tamil Nadu Transport Department, Government of Tripura Transport Department, *The Hindu* [Chennai], India Together, *Indian Express* [Mumbai], Institute of Road and Transport Technology, The Institute of Road Transport, Motor Vehicles Department of Government of Kerala, National Highways Authority of India, National Portal of India, Orissa Motor Vehicles Department, *The Statesman* [Kolkata], *Times of India* [Haryana], Transport Department of Government of Mizoram, Transport Department of Government of National Capital Territory of Delhi, Transport Department of Madhya Pradesh, *The Tribune* [Chandigarh], Uttar Pradesh State Road Transport Corporation, Uttar Pradesh Transport Department.

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